



Bill Draft 2011-SVxz-13: Revenue Laws Tech., Clarifying, & Admin Chngs.

2011-2012 General Assembly

Committee: Revenue Laws Study Committee
Introduced by:
Analysis of: 2011-SVxz-13

Date: April 11, 2012
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SUMMARY: *This legislative proposal includes several technical, administrative, and clarifying changes to the revenue laws and related statutes, many of which were requested by the Department of Revenue.*

EFFECTIVE DATE: Except as otherwise provided, this bill would become effective when it becomes law.

BILL ANALYSIS:

Section	Explanation
Income & Franchise Tax Changes	
1	Holding companies are subject to an annual franchise tax, which is capped at \$75,000. A holding company is currently defined as one that receives more than 80% of its gross income from corporations in which it owns, directly or indirectly, more than 50% of the outstanding voting stock or capital interests. However, a corporation whose only asset is an investment in subsidiaries and has no income cannot meet the 80% test because the denominator would be zero. This section expands the definition of a holding company to address this situation.
2	<p>A taxpayer is allowed a deduction for the amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal taxable income.</p> <p>Section 1603 of ARRTA directs the Treasury to provide cash payments, or grants, to eligible persons who place in service specified energy property and apply for the payments. The purpose of section 1603 is to reimburse eligible applicants for a portion of the expense of such property. A section 1603 grant recipient is required to reduce the basis of the asset. This change would allow a taxpayer to reduce his or her State taxable income if the taxpayer receives a section 1603 payment rather than a credit under sections 45 or 48 of the Code.</p>
3	This section updates from January 1, 2011, to January 1, 2012 the reference to the Internal Revenue Code. This change keeps the statute up to date, but does not result in any substantive changes because there have not been any federal tax law changes since January 1, 2011 that impact the calculation of North Carolina taxable income.

Sales Tax Changes	
4	This section makes two changes to sales tax definitions in order to conform to the Streamlined definitions, and it updates the reference to the most current version of the Streamlined Agreement dated December 19, 2011.
5	This section clarifies the general sourcing provisions to conform to the Streamlined requirements. It was noted during the 2011 Annual Compliance Review that the existing statute was not consistent with the Streamlined requirements.
6	Restores language that was inadvertently stricken from the statute.
7	This section restores language relating to the application of use tax to items given away by merchants, which was inadvertently deleted in a 2009 budget provision. The language was originally added to the definition of "sale or selling" in 1996 as the result of a court case. ¹ The language was intended to restrict the application of that case. In 2009, the language was removed from the definition with the intent that it be located elsewhere in the sales and use tax statutes. However, it was never relocated. This section restores the language by placing it in a new statutory section, effective the date that the 2009 deletion became effective since there was no intent to remove it.
8	This section amends the sales tax exemptions for delivery and installation charges so that the language is parallel. It adds the phrase "similar billing document," which currently appears in the exemption for delivery charges, to the exemption for installation charges. It adds the phrase "at the time of sale," which currently appears in the exemption for installation charges, to the exemption for delivery charges.
9	This section makes two changes related to sales tax refunds for interstate carriers. First, it modifies the reference to "them" to make it clear that, for purposes of calculating a refund on certain cars, parts, fuel, and repair parts, an interstate carrier must include all motor vehicles, railroad cars, locomotives, and airplanes operated both inside and outside the State in the denominator. Second, it clarifies that airplane miles are not in this State if the airplane only flies over North Carolina but does not take off or land in the State.

¹ The general rule in this State, and virtually all states, is that a retailer who gives away products free of charge instead of selling them is liable for the sales and use tax. Until 1993, the following items were considered used, not sold, and thus subject to use tax: meals provided free to a merchant's employees, food given away to the merchant's patrons, and matches given away to patrons, other than matches given away along with the sale of cigarettes. A group of restaurants appealed the assessment of the tax, claiming that the items should be considered sold. In *Matter of Rock-Ola Café*, 111 N.C.App. 683 (1993), the North Carolina Court of Appeals agreed with the restaurants that these items should be considered sold along with the food the restaurant sold as part of its business. However, the Revenue Laws Study Committee, in its report to the 1996 Regular Session, concluded that the Court's opinion was overly broad in its rationale. The rationale, that the cost of these items is recovered by the sales of other items, taken literally, could be interpreted to eliminate the use tax altogether for merchants in that the cost of all of a merchant's purchases are covered by the price of sold items. The Committee recommended, and the General Assembly enacted, the language in this section to limit the application of the court's opinion.

10	This section conforms the statute on the scope of the local use tax so that it is consistent with the parallel statute for the State use tax, which was amended during the 2011 session. The 2011 change was a clarifying change.
General Administration Changes	
11	This section adds an additional Code reference to the statute that governs when a return, report, payment, or any other document that is mailed to the Department is timely filed. Code section 7503 addresses when the due date falls on a Saturday, Sunday, or a holiday.
Other Changes	
12	S.L. 2011-12 added synthetic cannabinoids to the list of controlled substances. No corresponding changes were made to the unauthorized substance tax laws. Therefore, under current law, they would be grouped with "other controlled substances" and subject to tax at a rate of \$200 per gram. Marijuana is taxed at \$3.50 per gram. This section would tax synthetic cannabinoids at the same rate as marijuana, effective when the S.L. 2011-12 became law.
13	This is a technical change because the existing statutory catchline refers to an Article that does not exist.
14	This is a technical change to correct a statutory reference.
15	Generally speaking, the State may not contract with foreign vendors that refuse to collect use tax, where applicable, on sales delivered to North Carolina. G.S. 143-59.1 requires the Department to periodically provide to the Secretary of Administration a list of ineligible vendors based on this requirement. This section modifies the obligation on the Department such that it need only verify, upon request, a vendor's ineligibility in lieu of providing a periodic list. The Department does not receive the information in order to adhere to the requirements of the current statute.
16	S.L. 2011-72 authorized certain cities to establish a municipal service district for the purpose of converting private residential streets to public streets. The act was designed to address 14 residential developments in the Town of Morrisville that were seeking to convert private streets to public streets. After the bill passed, it was discovered that some of the developments were created under the Condominium Act rather than the Planned Development Act, which the bill amended. This section makes the necessary conforming changes.

17	<p>This section removes the confusion caused by the new fee applicable to the recording of subsequent instruments by eliminating the fee and imposing a \$10 fee for an instrument that assigns more than one security instrument by reference to a previously recorded instrument. S.L. 2011-296 changed the fees collected by register of deeds for the purpose of simplifying their collection and remittance. As part of the legislation, a new fee became applicable to the indexing and filing of "subsequent instruments." Several registers of deeds have questioned how to apply the new fee applicable to subsequent instruments that contain references to multiple recorded documents, such as cancellations of multiple deeds of trust or substitution of trustee in multiple documents.</p>
Special License Plate Changes	
18	<p>This section corrects several errors in the 2011 special license plate bill. It adds the "Mountains-to-Sea Trail" plate to the list of plates that may be on a background other than the First in Flight background, which was the original intent. In G.S. 20-79.4, the authorization for the plate states that it "shall bear the phrase 'Mountains-to-Sea Trail' with a background designed by the Friends of the Mountains-to-Sea Trail," suggesting that the organization may design its own background. However, in order for an organization to have a background other than First in Flight, it must be authorized in G.S. 20-63.</p> <p>This section also corrects errors with regard to the fees for the Sustainable Fisheries and the Morgan Horse Club plates.</p>

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